

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2584

Heard in Montreal, Tuesday, 14 February 1995

concerning

ONTARIO NORTHLAND RAILWAY

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

DISPUTE:

Mr. Tony Onolack was unjustly dealt with by the Company when he was assessed a six-month suspension.

JOINT STATEMENT OF ISSUE:

The contention of the Brotherhood is that the Company dealt with the grievor in an unjust manner by assessing Mr. Onolack with a six-month suspension.

While receiving Workers' Compensation benefits, Mr. Onolack was involved in an incident resulting in an investigation being conducted. No facts were established during the investigation to justify the excessive amount of discipline imposed on the grievor.

The Brotherhood has requested that the discipline be reduced as it is too harsh.

The Company has denied the Brotherhood's contention and declined the Brotherhood's request.

FOR THE BROTHERHOOD:

(SGD.) G. SCHNEIDER
SYSTEM FEDERATION GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) T. McCARTHY
FOR: PRESIDENT

There appeared on behalf of the Company:

M. J. Restoule – Manager, Labour Relations, North Bay

And on behalf of the Brotherhood:

P. Davidson – Counsel, Ottawa

G. Schneider – System Federation General Chairman, Winnipeg

D. Brown – Senior Counsel, Ottawa

AWARD OF THE ARBITRATOR

Upon a review of the material the Arbitrator is satisfied that the position of the Brotherhood is correct, in that the assessment of a six month suspension was excessive in all of the circumstances, regard being had to certain mitigating factors.

It is not disputed that the grievor, Mr. Tony Onolack, engaged in serious misconduct by verbally abusing two supervisors in the Roadmaster's office in Cochrane on or about July 9, 1993. It appears that during the course of the confrontation, Mr. Onolack poked and pushed Assistant Roadmaster V. Williams in the chest, while uttering threats to both Mr. Williams and Mr. Snively. It is common ground that the grievor subsequently pleaded guilty to a charge of assault in Provincial Court, as a result of which he was fined.

There are a number of mitigating circumstances to consider in the case at hand. It is not disputed that Mr. Onolack acted out of anger, prompted in substantial part by his learning that Mr. Snively and Mr. Williams had made a report to the Workers' Compensation Board in relation to his performing private work while being in receipt of Workers' Compensation benefits, causing the WCB benefits to be suspended. Although the benefits were later restored, the suspension of revenue for the support of his family occasioned substantial hardship for the grievor. It is not disputed that his reaction, involving by clearly excessive and improper conduct on July 9, 1993, was prompted by his perception of these events. While I would not qualify the supervisors' actions as provocation, the overall facts disclosed give some indication as to the state of mind which prompted Mr. Onolack to lose control (cf. **CROA 1688**). Further, it does not appear disputed that Mr. Onolack was under a substantial degree of personal stress, by reason of the fact that his common law spouse was then terminally ill and he had the care of her two children, which he maintained after her death.

Although the grievor is not of long service, he is possessed of a good disciplinary record. On the whole, the Arbitrator agrees with the Company that he was deserving of a substantial degree of discipline for the conduct in question. A suspension of six months is, however, extraordinary, if not unprecedented in the Company's practice. In the Arbitrator's view a three month suspension would have served to convey to the grievor the seriousness of his actions, and would have achieved the requisite rehabilitative effect. I therefore exercise my discretion to reduce the suspension to three months, and direct that the grievor's record be amended accordingly, and that he be compensated correspondingly for wages and benefits lost.

17 February 1995

(signed) MICHEL G. PICHER
ARBITRATOR